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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MICHAEL BEST & FRIEDRICH LLP  
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EXAMINER
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NORMAN, MARC E

ART UNIT	PAPER NUMBER
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3744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/715,155

Applicant(s)

STREET ET AL.

Examiner

Marc E. Norman

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-85 and 87 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☒ Claim(s) 78, 79, 82 and 83 is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 14, 16, 21, 26, 27, 47, 49-53, 59, 65 and 72-75 is/are rejected.
- 7) ☒ Claim(s) 2, 9, 48, 54-56 and 58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/11/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims withdrawn from consideration are 10-13,15,17-20,22-25,28-46,57,60-64,66,67,69-71,76,77,80,81,84,85 and 87.

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Art Unit: 3744

### **DETAILED ACTION**

This case was previously indicated as being in condition for allowance. Subsequently, Applicant filed a new IDS in conjunction with a Request for Continued Examination. Based on an updated search, a new rejection of the claims is set forth below based on newly found prior art. The Examiner apologizes that the newly applied prior art was not found earlier in the prosecution.

#### ***Claim Objections***

Claim 68 is objected to. Claim 68 depends from non-elected claim 67. As such, it is also considered non-elected subject matter and thus not examined at this time.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 75 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 75 recites the limitation "the first fixture" in lines 2-3 of the claim. There is insufficient antecedent basis for this limitation in the claim. Accordingly, this claim has not been examined on the merits.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7, 8, 14, 16, 21, 26, 27, 47, 49-53, 59, 65, 72, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Ibrahim.

As per claims 1 and 7, Ibrahim discloses a commercial refrigeration system comprising a compressor 8, condenser 10, valve 6, and multiple evaporator coils 4 cooling respective merchandisers 2, a subsystem controller in communication with and communication information to a system controller (see for example column 5, lines 52-59; column 7, lines 60-63), the subsystem monitoring the first merchandiser (air temperature passing through coils), and the compressor and condenser being remote from the first merchandiser (Figure 1).

As per claim 3, Ibrahim discloses a monitoring safety parameter (see alarm temperature condition control at column 6, lines 8-18).

As per claims 8, 16, and 21, Ibrahim discloses the subsystem comprising valve 6 and evaporator 4, and monitoring and communicating suction line temperature and evaporator (merchandiser) air temperature to the system controller (Figure 1).

As per claims 14, 47, 49-52, and 65, Ibrahim discloses the position of expansion valve 6 being electronically controlled by suction line temperature parameter as compared to a set value, which inherently controls the pressure of refrigerant to the evaporator (see column 5, lines 20-51).

Art Unit: 3744

As per claim 26, Ibrahim discloses a defrost operation (column 6, lines 8-24).

As per claim 27, Ibrahim discloses a refrigerant supply line to the evaporator (Figure 1).

As per claim 53, Ibrahim discloses separate subcontrollers for each of the separate merchandisers (column 5, lines 52-59).

As per claim 59, the evaporator, compressor, condenser, valve circuit recited is shown in Figure 1 of Ibrahim.

As per claims 72 and 73, Ibrahim discloses I/O device 24 communicating with controller 26 (Figure 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6, 54, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibrahim.

Art Unit: 3744

As per claims 4-6, 54, 74, while Ibrahim does not specifically discuss these various types of communication, official notice taken that wireless, wired, and digital communications are all well-known types of control communications that would have been obvious to one of ordinary skill in the art for the purpose of facilitating communication among different controllers.

***Allowable Subject Matter***

Claims 2, 9, 48, 54-56, and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 78, 79, 82, and 83 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN



**MARC NORMAN**  
**PRIMARY EXAMINER**